Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1998

ROBERT H. KEELER, pro se
Petitioner

v.

ACADEMY OF AMERICAN
FRANCISCAN HISTORY, INC., et al
Respondent

On Petition for writ of Certiorari to the to
The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

Robert H. Keeler, pro se
P.O. Box 59370
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301-254-5678

February 10, 1999

35pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioner was denied equal protection of the law under the 14th Amendment to the Constitution of the United States.

2. Whether the Petitioner was denied due process of law under the 14th Amendment to the Constitution of the United States.

3. Whether the Petitioner was denied the right to a trial by jury as provided in the 7th Amendment to the Constitution of the United States.

LIST OF PARTIES

Robert H. Keeler, pro se, is the Petitioner in this case.

The Respondents are: The Academy of American Franciscan History, Inc.;Patrick C. McKeever, individual; Miller, Miller & Canby, Chartered; and Miles & Stockbridge, P.C.

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CASES CITED:

Camacho v. Mancuso, 53 F.3d 48 (4th Cir. 1995) and all the cases in every State of the Union, whether Federal or State that this Court would care to refer to.

RULES CITED:

Rule 2-506(a)(2) ANNOTATED CODE OF MARYLAND Maryland Rules Volume 1 .....Page 2

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

No.

ROBERT H. KEELER, pro se
Petitioner,

v

ACADEMY OF AMERICAN FRANCISCAN HISTORY, INC., et al
Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Robert H. Keeler, pro se, on his own behalf, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Special Appeals and the Court of Appeals of Maryland entered in this case on November 13, 1999

OPINIONS BELOW

The opinion of the Special Court of Appeals of Maryland is not reported. It is reprinted as App.B infra, pp

JURISDICTION

The order of the Court of Appeals of Maryland was entered on November 13, 1998. The jurisdiction of this Court is invoked as the Court of last resort.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

The Civil Rights Clause of the Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

..." nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.",,

The Rights in Civil Cases of the 7th Amendment to the Constitution provides in pertinent part:

..." In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved"

MARYLAND RULE VOLUNTARY DISMISSAL

Rule 2-506 (a) By Notice of Dismissal or Stipulation.--- Except as otherwise provided in these rules or by statute, a plaintiff may dismiss an action without leave of court (1) by filing a notice of dismissal at any time before the adverse party files an answer or a

motion for summary judgment or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

FEDERAL RULE VOLUNTARY DISMISSAL
Fed.R.Civ.P.41(a) states in pertinent part:

Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the Plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

STATEMENT OF THE CASE

This case develops out of a breach of contract, a Standstill Agreement, entered into by the Petitioner, Robert H. Keeler, a real estate developer, and the Academy of American Fraciscan History, Inc., (AAFH) and the Respondents, their attorneys: Patrick C, McKeever (McKeever), Miles & Stockbridge, P.C. (M&S), and Miller, Miller & Canby Chartered (MM&C)

The Petitioner was the President of a development corporation that purchased real property from the client AAFH of the Respondents, McKeever, et al. The Petitioner had many other valuable properties and interests in various projects in Montgomery County, Maryland and elsewhere.

When the general slowdown hit the real estate industry in late 1998 and early 1990, the Petitioner and AAFH entered into a Standstill Agreement, prepared by the Respondents McKeever and M&S, dated June 7, 1990, which was designed to delay the enforcement of any Charging Orders which were filed against the Petitioner for a period of four years to allow the Petitioner the time to work his various projects in order to pay his debts. In early 1992

the Respondents, ostensibly on behalf of their client AAFH, breached this contract and impounded approximately $1,500,000.00 of the Petitioner's funds in the Circuit Court of Montgomery County, Maryland.

These funds were necessary for the survival of the Petitioner's business. The withholding of these funds meant the Petitioner could not make interest payments to various lenders, and as a result key properties (including the property purchased from AAFH) were placed in default and foreclosed as a direct result of that action.

The Petitioner was then burdened with over $18,000,000.00 in deficit judgments by his creditors. After filing a suit against AAFH the Circuit Court and the Court of Special Appeals (Case No. 632, September Term 1992, Unreported) found in favor of the Petitioner and stated on Page 9 "AAFH then worked significant mischief" by circumventing the Agreement.

The Respondents, McKeever and M&S, then filed a motion for reconsideration which was denied by the Court on February 11, 1993, and the Mandate issued on February 18, 1993. AAFH, through its attorneys, then filed a Petition for Writ of Certiorari and a Stay of the Mandate with the Court of Appeals on March 5, 1993. The stay was not granted and the Writ was dismissed, with costs, as improvidently granted on September 15, 1993.

AAFH's Motion to Stay Proceedings filed with the Circuit Court on March 11, 1993, was similarly denied by the Court on March 23, 1993, and ordered that the funds held in escrow by McKeever ($1,500,000.00) be turned over immediately to the Petitioner.

When McKeever was asked to release the funds to the Petitioner by his attorney, Mckeever replied that"Six of the Sheriffs strongest men couldn't get me to write that check."

McKeever did not release the funds to the Petitioner at that time or thereafter. Three days of refusing to obey the Order went by and on Friday afternoon on March 26, 1993 at 4:00 pm, one of the attorneys for the Petitioner visited with the Circuit

Court Judge that issued the Order to complain about the failure of Mceever to turn over the funds. The Judge ordered that McKeever,et al, show up at his chambers on the following Monday Morning the29th at 9:00 am.

Upon hearing the news, McKeever rushed to the Courthouse and filed a motion for reconsideration at 4:45 Friday afternoon. On Monday morning the Judge asked McKeever where the funds were.McKeever replied that "they were being changed into the coin of the realm as we speak." Evidently the funds were not being kept in a cash escrow account as required by law. Again the Judge ordered that the funds be turned over to the Petitioner. McKeever replied that if he released the funds someone else might get them, and waved a copy of a f ax received in his office on Saturday, March 27,1993.

The fax was from the attorneys for the Resolution Trust Corporation (RTC). McKeever's illegal impoundment of the Petitioners funds left the Petitioner without the ability to make his interest payments to the RTC and, therefore, placed him in default on the first trust recorded against the property purchased from AAFH. The RTC had filed a self confessed judgment against the Petitioner for non-payment of interest on February 1993, but had not served the Petitioner with notice. The RTC was unaware that these impounded funds existed in McKeever's possession. Realizing that the Court was forcing the release of these funds, McKeever contacted the attorneys for the RTC and told them of their existance. The attorneys for the RTC responded by faxing a letter to McKeever on Saturday, March 27, asking McKeever to hold on to the funds until they could obtain garnishment from the Federal Court in Baltimore on Monday the 29th. This is the aforementioned faxed letter that McKeever waved before the Judge's face at the hearing in his chamber. Once again the Court ordered McKeever to release the funds and "let the chips fall where they may."

McKeever stormed from the meeting and would not return telephone calls until 4:00 pm in the afternoon, when he announced that he had turned the funds over to the Federal Court in Baltimore.

The attorneys for the RTC obtained garnishment from the Federal Court by violating the Petitioners constitutional rights of due process.

M&S, who represented the Petitioner and some of his partners in another and unrelated action , became aware of the above story during the taking of a deposition of the Petitioner. M&S and McKeever had built the proverbial chinese wall which allows a lawyer and the firm he represents to work at cross purposes in relation to their client. In response to this activity, McKeever cleaned out his desk three days later, and relocated at the offices of MM&C where he continued his acts of mischief upon the Petitioner. The Court will please keep in mind that all of these acts, by McKeever and the firms he represented, were done without the knowledge of his client AAFH. The Court will please refer to the Petitioners Affidavit. (Appendix.17-18)

McKeevers next move was to file an Involuntary Chapter Seven proceeding against the Petitioner in the Bankruptcy Court in Rockville, Md.. This action violated the Standstill Agreement, and AAFH withdrew its complaint. This Action had a twofold purpose. The first of these was an attempt to gain control of the funds that were now lodged in the Federal Court in Baltimore. The second, and most devious, was to wipe their fingerprints from the smoking gun. This was indeed abusive prosecution by McKeever, et al.

Again, one of the key points of this narrative is that at no time was AAFH aware that McKeever, et al, were breaching the contract and abusively prosecuting the Petitioner in their name. AAFH was not aware until two and on half years after the fact, that the Petitioner had filed a lawsuit against them. Please see affidavit (Appendix 17-18) of the Petitioner.

Most recently, a case that arose from the Standstill Agreement, and is currently at the Court of Special Appeals of Maryland. In this case, the Respondent, McKeever, obtained an Ex Parte hearing

with the Circuit Court, without the Petitioners knowledge, and committed perjury and obstructed justice in order to obtain an Order from the Court releasing approximately $400,000.00 of the Petitioner's funds. He then proceeded to pay himself, according to his accounting, a fee of $400,000.00. AAFH did not receive any of the funds. All of these acts by the Respondents were for this purpose alone, the $400,000.00 attorney fee.

On November 2, 1994,.the Petitioner amended his complaint against AAFH to include McKeever,, et al, for tortuous interference and abuse of process. In response, McKeever and M&S filed a Motion To Dismiss or in the alternative, for Summary Judgment on January 17, 1995. At the hearing on April 5, 1995, the Court dismissed the case on a technicality, not on the merits of the case. The attorney for the Respondents had filed an affidavit with their request for Summary Judgment. According to the then attorneys for the Petitioner, the Defense had not included the affidavit in the copy of the brief that they sent to him. The Court said that was too bad, but that it was relying upon the Courts Docket, and the case was dismissed for lack of affidavit from the Petitioner.

As the Petitioner was in the Courtroom at the time, the Court could have sworn him in and taken his affidavit, but failed to do so. This Court will please note that McKeever, M&S and MM&C are the most prominent law firms in Rockville, Maryland, and they are politically powerful with the State Government of Maryland. M&S is the second largest law firm in the state.

Shortly thereafter, the then attorneys for the Petitioner reached him by telephone and told him that "We have to let them go". They gave the Petitioner no other alternative. They said that James Thompson of MM&C called them and threatened them with suits and sanctions, and made reference to one of his fellow attorneys who was a retired Federal Judge with much clout.

The Petitioner never wanted to release the Respondents from the responsibility they owed him, but after much pressure from his then attorneys, he reluctantly agreed. On April 19, 1995 a

document captioned "Notice of Voluntary Dismissal" signed by the then counsel for the Petitioner; counsel for MM&C and counsel for McKeever and M&S; but not by counsel for AAFH, was filed with the Court.

The Petitioner was burdened by great financial pressure brought about by the Respondents actions and had no available funds to hire new counsel. However, Petitioner finally found counsel willing to represent him.

The Petitioner then fired his less than competent counsel and, with new counsel, withdrew his name from the Stipulation, which did not contain all of the names who were parties to the action, making the document invalid. The Petitioner then moved to vacate the Notice of Voluntary Dismissal. On the same day, the Petitioner filed a second amended complaint, asserting claims of breach of contract and abuse of process/malicious use of process against AAFH and claims of interference with contractual relations, abuse of process/malicious use of process, and legal malpractice against McKeever, M&S, and MM&C.

One week and a half later, in response to the Petitioners motion to vacate the Notice of Voluntary Dismissal, AAFH, through their attorneys filed a "Consent to Dismissal". This Consent took place well after the Petitioner had withdrawn his name. The Petitioner filed a Motion to Vacate that Consent. The Respondents filed a Motion to Strike Petitioner's Motion to Vacate the voluntary dismissal.

On December 5, 1996, the Court, without oral argument, announced that it was ready to rule. The Court denied the Petitioner's Motion to Vacate and held that AAFH's consent was effective. See Order issued on January 17 and 27, 1996. (Appendix 13)

Appeal to the Court of Special Appeals of Maryland was made by counsel for the Petitioner, Case No. 1346, September Term 1997. With no oral argument allowed, in an unreported Opinion filed by the Special Court of Appeals, the voluntary dismissal was

upheld and AAFH's consent was found effective. (Appendix 2)

On August 25, 1998 the Petitioner filed, pro se, (the Petitioners attorney was killed in an accident in March of '98) a request for a Writ of Certiorari in the Court of Appeals of Maryland. On November 13,1998 the Court of Appeals denied the Petitioner's request and issued an Order that a review was not in the public interest. (Appendix 1)

The actions by the counsel for AAFH wrecked havoc with the activities of the development firm which was owned by the Petitioner. It brought about numerous failures and foreclosures, and left the Petitioner with millions of dollars of debt, all because some attorneys wanted to collect a large fee.

The Petitioner would like this Court to know that he is not litigious. In all his thirty some odd years in business he had never sued anyone, nor had he been sued until this fracas with AAFH and their attorneys.

When the Petitioner was a young man, growing up in the forties and fifties, Attorneys and Judges had, and deserved, honorable reputations. That has certainly changed when polls proclaim that they are now despised by the vast majority of the population and hold a position lower than used car salesmen. Reasonable people know that it is only a few bad apples that have labeled the rest as bad. It is expected that the bar associations would be responsible for weeding out the trash among them. But, one wonders how? After all, McKeever was the president of the Montgomery County Bar Association while he was committing all of this mischief.

REASONS FOR GRANTING THE PETITION

This case presents important questions under the Due Process Clause and the Equal Treatment Under the Law Clause of the Fourteenth Amendment of the Constitution.

The language of the Fourteenth Amendment is clear and concise. It is unequivocal and unambiguous. There is no doubt as

to its meaning. The same can be said for Rule 2-506 (a) (2) of the Maryland Annotated Code. This Rule is taken from the **Rule Fed.R.Civ.P.41(a)(1)** and reads virtually the same. Every Court case that the Petitioner has looked up, both State and Federal require the same. Namely that all of the Parties to the Action must sign the dismissal for it to be effective, and in particular the signature of the Plaintiff is required. There has not been one case in any Court, State or Federal, which did not require all of the signatures of all of the Parties to the Action, and at the very least, the signature of the Plaintiff.

The Petitioner had an absolute right to withdraw his name from that document prior to the obtaining of all of the signatures. Both the Courts and the attorneys focused on the wrong arguments. In the case of the Petitioner the Special Court of Appeals stated that although the Petitioner had removed his name, it was his intent to dismiss. (App.2-12) There was no oral argument before this panel, and unless they are practicing mind readers, there is no way that they could know the Petitioners intent. In fact, their crystal ball was off by 180 degrees. Why would the Petitioner withdraw his signature, if not because that was his intent?

It is axiomatic, under contract law, that all necessary signatures are required for a contract to be valid. Rule 2506(a)(2) specifically states that all signatures are required. This can be represented in this way. Suppose that the same three Judges had purchased a farm as an investment for their retirement. That they placed the farm for sale and that you, the reader, saw the farm, and its beauty, and offered a formal contract to purchase the farm. The following day, after having made the offer, you stop by the land records of the county and discover that the farm adjacent to the one you have offered to purchase is going to become a county landfill. Upon hearing this news you notify the Sellers that you are withdrawing your offer to purchase. The contract has not yet been fully ratified because one of the Judges is vacationing in Europe, and has not been reached. However, upon his return he ratifies the contract and

now these three judges are demanding payment in full. There is not a court in this land that would uphold that contract of sale.

The same is true here. The Petitioner had a legal right to remove his name from the Stipulation prior to the document being fully ratified by the opposing party. Therefore, the Petitioner did not receive the Equal Protection Under the Law as stated in the Fourteenth Amendment. There is not one case on record in which all of the signatures are not required, until now. Because the Petitioner was denied Equal Treatment Under the Law, he was also denied Due Process of Law.

The Court of Appeals of Maryland denied the Petitioners request for a Writ of Certiorari because "there was no showing that review by certiorari is desirable and in the public interest'. (App 1)

When the common citizen of the United State looks at his system of government, they admire its genius for the separation of powers by the three branches. And when that same common citizen reviews those branches, the Administration, Congress, and Judicial, they come to the same conclusion,' each is in need of the other for balance. One, however, stands above all else in importance, the Judicial. Because this citizen knows that the Administration may make a mistake, and the Congress may make a mistake, and even the lower courts of the land may make a mistake, but in the final analysis the Supreme Court can and will rectify the mistake.

This is a greater responsibility. The law, is after all, the adhesive which binds this nation together and makes it work. It is easy to see why equal protection under the law is so important a clause. Without it, there would be chaos.

About four centuries ago, John Dunne in his Meditation-XVII, Divine Poems (1607), or Holy Sonnets (1618) put it this way: "No man is an island, entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less ... any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom

the bell tolls; it tolls for thee." It cannot be said more eloquently. Jefferson understood it when he and others wrote the Constitution. This concept is the most important of all concepts. It is why the Supreme Court chiseled it in marble over the entrance to their home. "**EQUAL JUSTICE UNDER THE LAW**"

The Court of Appeals of Maryland was dead wrong. The common citizen has more than a casual interest in Equal Justice, it is its supreme interest.

As to the Seventh Amendment to the Constitution. My understanding is that it usually refers to the Federal Court. However, the language simply states that: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

Well, the value of the judgments against me exceed $18,000,000.00. Surely I deserve a trial by Jury.

This case offers the Court the opportunity to address the issue of whether a State Court can interpret the Rules of Law differently than the Federal Government. Does the decision of both the Special Court of Appeals and the Court of Appeals for the State of Maryland conflict with relevant decisions of this Court.

CONCLUSION

For the foregoing reasons, the Petitioner requests that the petition for a writ of certiorari be granted.

Respectfully submitted,

Robert H. Keeler, pro se

APPENDICES

ROBERT H. KEELER

V.

THE ACADEMY OF AMERICAN FRANCISCAN HISTORY, INC.

IN THE
COURT OF APPEALS
OF MARYLAND

Petition Docket No. 391

September Term, 1998
(No. 1346, Sept. Term,1997,
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

Isl Robert M. Bell
Chief Judge

Date: NOV 1 3 1998

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1346

SEPTEMBER TERM, 1997

ROBERT H. KEELER et al.

V.

THE ACADEMY OF FRANCISCAN HISTORY, INC., et al.

Moylan,
Kenney,

Bishop, John J. (Ret'd, specially assigned),

ii.

opinion by Kenney, J.

Filed: July 10, 1998
87511

Appellants, Robert H. Keeler and Saratoga Development Corporation ("Keeler"), challenge the order of the Circuit Courr- for Montgomery County, which denied its motion to vacate the voluntary dismissal of appellees, Patrick McKeever ("McKeever") , Miles & Stockbridge P.C. ("MES") , and Miller, Miller & Canby, Chartered ("MMC") , and found effective the consent to dismissal filed by the Academy of American Franciscan History, Inc. ("AAFH") , another party to the original action. Keeler raises five questions on appeal, which we have rephrased and consolidated into two:

I. Did the trial court err when it found AAFH's.consent to the voluntary dismissal was effective and upheld the voluntary dismissal?

II. Were appellant's third party beneficiary legal malpractice claims against McKeever, M&S, arid MMC validly dismissed.

We hold that the trial court did not err when it upheld the voluntary dismissal and found effective AAFH's consent to that dismissal. Therefore, it is unnecessary to address appellant's remaining question.

FACTS AND PROCEEDINGS

In 1988, Keeler and AAFH entered into a contract in which Keeler agreed to purchase certain real property from AAFH. Keeler subsequently defaulted on his payment obligations, and AAFH caused a judgment by confession to be entered against Keeler in the circuit court for $4 million. On December 20, 1989, the circuit court issued charging orders against certain partnerships, charging any interest held by Keeler in those partnerships against

satisfaction of that judgment. On June 7, 1990, however, Keeler and AAFH entered into an agreement (the "Standstill Agreement") in which AAFH promised to refrain from any further action causing execution on or enforcement of its judgments entered against Keeler. In return, AAFH received certain interests Keeler had in several partnerships and other consideration. Throughout these negotiations, AAFH was represented by McKeever, who was associated initially with M&S and, after November 1, 1993, with MMC.

In February 1992, "370 Limited Partnership," a partnership in which Keeler had an interest but which was not expressly named in the Standstill Agreement, received a condemnation award of $15,103,405. Thereafter, AAFH, through McKeever, executed charging orders against this award and obtained $1.5 million, which was paid to M&S, McKeever's law firm. Keeler subsequently obtained a stay of the charging orders, but M&S continued to hold the money in escrow pending appeal.

On December 17, 1992, this Court issued an unreported opinion affirming the stay of the charging orders. The mandate for this opinion was returned on February 24, 1993, and, on the same day, Keeler filed a motion to release the funds held in escrow by M&S. On March 11, 1993, AAFH filed a petition for writ of certiorari in the Court of Appeals and a motion to stay the proceedings in Circuit Court. On March 26, 1993, the Circuit Court denied AAFH's motion to stay the proceedings and directed the immediate release of the funds owed to Keeler. AAFH then filed a motion to reconsider, and a hearing was scheduled for March 29, 1993. Prior to the hearing, however, M&S received notification that the Resolution Trust Corporation had issued out of the United States District Court a garnishment against Keeler, which compelled M&S to confess Keeler's assets. M&S then paid the escrow funds into the Registry of the United States District Court.

On November 2, 1994, Keeler amended his complaint against AAFH to include McKeever, M&S, and MMC, alleging that these three parties were liable to him for tortious interference with

contractual relations and abuse of process. MMC never responded to this complaint. On January 17, 1995, however, McKeever and M&S filed a motion to dismiss, or in the alternative, motion for summary judgment. Thereafter, a hearing was held on the motion, and, at the close of the hearing, the court granted the summary judgment requested and asked McKeever and M&S to submit a written order. Before the written order of the court was issued, however, Keeler agreed to dismiss his claims against McKeever, M&S, and MMC. On April 19, 1995, a documer.,t captioned "NOTICE OF VOLUNTARY DISMISSAL," signed by Keeler, McKeever, M&S, and MMC, was filed with the court, dismissing Keeler's claims against McKeever and M&S "with prejudice" and Keeler's claims against MMC "without prejudice." McKeever, M&S and MMC consented to the dismissal by executing the notice of voluntary dismissal. A.AFH did not sign the notice of voluntary dismissal, and Keeler's claims against AAFH continued.

On July 8, 1996, Keeler filed a motion to vacate the notice of voluntary dismissal, arguing that it was invalid because AAFH had not signed the notice. on the same day, he filed a second amended complaint, asserting claims of breach of contract and abuse of process/malicious use of process against AAFH and

claims of interference with contractual relations, abuse of process /malicious use of process, and legal malpractice against McKeever, M&S, and MM&C

On July 19, 1996, AAFH filed a document captioned "CONSENT TO DISMISSAL," which acknowledged its approval of the April 19, 1995 dismissal of McKeever, M&S, and MMC. Keeler responded by filing a motion to vacate that consent on August 5, 1996. Appellees then filed a motion to strike Keeler's motion to vacate the voluntary dismissal. After a hearing held on December 5, 1996, the court denied Keeler's motion to vacate the voluntary dismissal and held that AAFH's consent to the dismissal was effective.

Keeler's claims against AAFH were tried before a jury on June 18-19, 1997, and the jury returned a $1.5 million verdict in Keeler's favor. Thereafter, on July 31, 1997, Keeler filed the current appeal, challenging the December 5, 1996 order of the court, which, *inter alia,* denied his motion to vacate the voluntary dismissal of McKeever, M&S, and MMC.

DISCUSSION

Maryland Rule 2-506 (a) states:

> Except as otherwise provided in these rules or by statute, a plaintiff may dismiss an action without leave of court (1) by filing a notice of dismissal at any time before the adverse party files an answer or a motion for summary judgment or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

In the instant case, Keeler argues that, because McKeever and M&S filed a motion for summary judgment in response

to his complaint, the voluntary dismissal was inoperative because one of the parties to the action, AAFH, did not sign the stipulation to dismiss. In support of this contention, Keeler relies on **Camacho v. Mancuso,** 53 F.3d 48 (4 th Cir. 1995), a case in which the United States Court of Appeals considered the proper application of Fed. R. Civ. P. 41 (a) (1) , the rule from which Md. Rule 2-506 was derived.' In that case, Camacho filed a complaint against Mancuso, and Mancuso filed an answer and a motion for judgment on the pleadings. The parties subsequently agreed to dismiss the case, and Camacho prepared a notice of dismissal, a facsimile of which was reviewed and approved by Mancuso, but not signed. Camacho then filed the notice of dismissal with the clerk of the court without obtaining Mancuso's signature.

Thereafter, Camacho reconsidered his decision to dismiss, and his motion to reopen the case was granted by the federal district court. "Specifically, the district court concluded that the notice was ineffective as a dismissal because it was not signed, orally stipulated to before the court by the defendants, or endorsed by the court." Camacho, 53 F.3d at 50. On appeal, the federal court of appeals affirmed, concluding that to hold otherwise would

'Fed. R. Civ. P. 41(a)(1) states, in pertinent part:

> Subject to the provisions of Rule 23 (e), of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

compromise the safeguards of the voluntary dismissal rule. As the court stated:

> A defendant has a strong interest in the resolution of an acticn, especially after he has taken the time and spent the money to file a responsive pleading. Additionally, he might have raised counterclaims in the answer. In some circumstances, a defendant might want the opportunity to clear his name or remove a blemish on his reputation. Without the requirement of a mutually signed, written stipulation, Rule 41(a)(1)(ii) would become a vehicle by which a plaintiff could dismiss an action at any point without the consent of a defendant. Clearly, such a result would be in direct conflict with Rule 41(a)(1)(i), which only allows a unilateral dismissal prior to a defendant's filing an answer to the complaint or filing a motion for summary judgment.

Id. at 51.

Appellees ask us to disregard the holding in **Camacho,** notwithstanding its relevance, as it is not binding authority on this court. They aver that the more persuasive argument as to the proper application of Rule 41 is found in **Camacho's** dissent. The dissent written by Judge Motz, noted that the "purpose of the requirement in Rule 41(a)(1)(ii) that the plaintiff obtain the defendant's consent to dismissal is to protect defendants from the arbitrary actions by plaintiffs." id. at 53. Because it was undisputed that both parties had agreed to dismiss the action and that the notice filed accurately reflected this agreement, Judge Motz reasoned that it would be unfair to subsequently allow the pl-aintiff, who had notified the court of the dismissal, to gain an advantage because it negligently had filed a deficient notice.

Appellees further argue that, even if the majority's holding

in ***Camacho*** is deemed persuasive, the facts of that case are distinguishable from those in the case at bar. Specifically, appellees argue that, in ***Camacho,*** there were only two parties to the agreement and only the plaintiff, Camacho, had signed the agreement filed with the court- Therefore, allowing the plaintiff to unilaterally dismiss the case, increased the possibility that the defendant's legal position would be compromised. In the present case, however, the notice of dismissal was signed by Keeler and the three defendants materially affected by the dismissal, McKeever, M&S, and MMC. Thus, appellee contends, at least as to those defendants, there was no uncertainty as to their objectives and, thus, there was no danger that the notice of dismissal unfairly compromised their legal. position.

In support of its position, appellees cite this Court's holding in **Pharmaceia Eni Diagnostics, Inc. v. Washington Suburban Sanitary Com'n,** 85 Md. App. 555, 584 A.2d 714 (1991). In **Pharmaceia,** the Washington Suburban Sanitary Commission (WSSC) .filed a declaratory judgment action against several property owners, including Pharmaceia. After Pharmaceia filed its answer, WSSC filed a notice of dismissal, which was not signed by Pharmaceia. Pharmaceia did not contest the dismissal, and, in fact, subsequently filed a separate suit against WSSC in federal district court. After the federal suit was dismissed for failure to,.state a claim, Pharmaceia filed an action against WSSC in the circuit court for inverse condemnation, which was dismissed based on the statute of limitations. on appeal of that case, which was

affirmed by the Court of Appeals, Pharmaceia acknowledged that had been dismissed from the original suit brought by WSSC.

Thereafter, Pharmaceia sought to reactivate its status in the original suit brought by WSSC by filing a counterclaim. WSSC filed a motion to strike the counterclaim, which was granted by the circuit court. This Court affirmed the dismissal stating that, "[a]lthough there was neither a formal Order of Dismissal nor a signed stipulation of dismissal filed, such papers are, under the circumstances of this case, unnecessary in light of appellant's conduct demonstrating its consent to the dismissal." Xd. at 565. The Court found that, under the circumstances of that case, Pharmaceias "consent to the dismissal (could] be inferred from its actions" and that, at the very least, Pharmaceia should "be estopped from contending that it objected to being dismissed."

Guided by the reasoning in **Pharmaceia,** and, based on the facts' and circumstances of the case sub *judice,* we conclude that the initial absence of AAFH's signature on the notice of voluntary dismissal did not invalidate the dismissal. Rule 2-506 is designed to protect the rights of defendants who have obtained a vested interest in the resolution of litigation initiated by plaintiffs. See **Now Jersey v. Strazzella,** 331 Md. 270, 627 A.2d 1055 (1993) . The Rule was never intended to be used as a tool for plaintiffs to reinstate litigation they had previously agreed to dismiss, to hold otherwise would countenance a manipulation of the Rule clearly contrary to its purpose.

Furthermore, we agree with appellee that the principles of

equitable estoppel preclude appellant from invalidating the notice of voluntary dismissal. "Equitable estoppel operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so." ***Fitch v. Double "U" Sales Corp.,*** 212 Md. 324, 339, 129 A-2d 93 (1957) ; **Subsequent** ***Xnjury Fund v. Ehx7nan,*** 89 Md. App. 741, 755, 599 A. 2d 875 (1992) . There is no dispute that Keeler voluntarily agreed to dismiss his claims against McKeever, M&S, and MMC. Moreover, those parties relied on Keeler's good faith in reaching that agreement. Certainly, McKeever and M&S would have pursued the trial court's grant of their motion for summary judgment and submitted the requested order.

While there may be some concern, as there was in Camacho, that voluntary dismissal signed only by the plaintiff may compromise defendant's legal position, such concerns do not arise from the facts of this case. Here, the notice of voluntary dismissal filed with the court was signed by the plaintiff and the three defendants to be dismissed. Thus, there is no uncertainty as to the intentions of those parties materially affected by the dismissal at the time the dismissal was filed with the court. We agree with appellee that the failure to obtain AAFH's signature on the dismissal may have given AAFH the right to subsequently challenge the dismissal. Rather than make such a challenge, however, AAFH instead filed a consent to the dismissal, which the trial which we now hold, was effective.court held, and

We conclude that the trial court properly found that both the voluntary dismissal and AAFH's consent to that dismissal were valid and effective in this case. Therefore, as of April 19, 1995, Keeler's complaint against McKeever and M&:S was dismissed with prejudice, and his complaint against MMC was dismissed without prejudice.Because Keeler's claims against MMC were dismissed without prejudice, MMC remained subject to future litigation

MMC acknowledges in its brief that, under the terms of the voluntary dismissal, it remained subject to future litigation but argues that we now should grant judgment in its favor. An argument advanced in support of dismissal is that any claims Keeler could potentially bring against it, except perhaps one involving the filing of involuntary bankruptcy proceedings, would be barred by the applicable statute of limitations. While this may, in fact, be true, it is clear that any issues related to Keeler's possible claims against MMC based on the dismissal without prejudice were never considered by the trial court. For example, both Judge Cave and Judge Turner limited the scope of their summary judgment orders to Keeler's claims against McKeever and MMC. Because Keeler's claims against MMC were not addressed below, we decline to consider them now. We note, however, that a valid voluntary dismissal under Rule 2-506 "vitiates and annuls all prior proceedings and orders ina case."***Baltimore & Ohio R. Co. v. Equitable Bank,*** 77 Md. App.320, 407 (1988).Thus, if Keeler chooses to pursue MM&C on the claims alleged in the second amended complaint, an entirely suit would have to be filed, which would, of course, be subject to a limitations analysis. ***Judge v. R&T Const. Co.,*** 68 Md. App. 57, 509 A.2d 1236, ***aff'd in part, rev'd in part,*** 323 Md. 514, 594 A. 2d 99 (1991) ; **Southerly** ***v. Perfect Auto Radiator Co.,*** Inc., 101 Md. App. 113, 120, 643 A.2d 501 (1994).

JUDGMENT AFFIRMED.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY
ROBERT H. KEELER,
Plaintiff

V. Case No. 87511

THE ACADEMY OF AMRICA.N
FRANCISCAN ~HISTORY. INC.. et al.,
Defendants
ORDER

The above-refereneced civil action came on for hearing on December 5, 1996 upon the Motion filed *by the Plaintiff to Vacate the Notice of Voluntary* Dismissal of Patrick C. McKeever, Miles & Stockbridge, P.C. and Miller. Miller & Canby, Chartered. Plaintiffs Mojon to Disqualify Mr. McKeever and the Motion to Strike Plaintiffs Motion to Vacate Notice of Voluntary Dismissal as filed by Mr. McKeever, Miles & Stockbridge, P.C. and Miller, Miller & Canby, Charted.

The pleadings having been read and considered, the argument of counsel having been heard it is this 17th day of January 1997 by the Circuit Court for Montgomery County, hereby:

ORDERED,

(1) That the Plaintiffs Motion to Vacate the Voluntary Dismissal of Patrick C. McKeever, Miles & Stockbridge, P.C. and Miller, Miller & Canby, Chartered. is hereby DEINIED-,

(2) That the Plaintiffs Motion to Disqualify Mr. McKeever is DENIED, WITHOUT PREJUDICE;

and

('5) That the Motion to Strike Plaintiffs Motion to Vacate filed

by Defendants Patrick C. McKeever, Miles & Stockbridge, P.C. and Miller. Miller & Canby, Chartered is hereby GRANTED

The Court adopts the reasoning as set forth during argument on December 5, 1996, and reaffirms its decision that the previously filed Amended Complaint was the subject of a hearing and rulings by the Honorable William M.Cave on April S. 1995. This Court finds that Judge Cave granted summary judgment in favor of Mr. McKeever and Mile and Stockbridge, P.C. in those proceedings. This Court further finds that consent to Dismissal as filed by Defendant American Academy of Franciscan History is effective

William P.Turner, Judge

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

ROBERT H. KEELER,
Plaintiff

V. Case No.: 87511

THE ACADEMY OF AMERICAN FRANCISCAN HISTORY, INC., et al.,
Defendants

ORDER

The above referenced civil action came on for hearing on December 5, 1996 upon the Motion filedby the Plaintiff to Vacate the Notice of Voluntary Dismissal of Patrick C. McKccvcr, Miles &Stockbridge,P.C. and Miller, Miller & Canby, Chartered, Plaintiffs Motion to Disqualify Mr. McKeever; and theMotion to Strike Plaintifrs Mo6on to Vacate Notice of Voluntary Dismissal as filed by Mr. McKeever, Miles & Stockbridge, P.C., Miller, Miller& Canby, Chartered.

The pleadings having been read and considered, the argument of counsel having been heard, it is this 27th day of January 1997: by the Circui Court for Montgomery County, hereby:

ORDERED:

(1) That the Paintiff's Motion to Vacate the Voluntary Dismissal of Patrick C. McKeever, Miles & Stockbridge, P.C., Miller, Miller & Canby, Chartered is hereby Denied.

(2) That the Plaintift's Motion to Disqualify Mr. McKeever is DENIED, WITHOUT PREJUDICE;

and

(3) That the Motion to Strike Plaintiff's Motion to Vacate filed by Defendants Patrick C.McKeever, Miles & Stockbridge, P.C. and Miller, Miller & Canby, Chartered is hereby GRANTED.

The Court adopts the reasoning as set forth during argument on December 5, 1996, and reaffirms its decision that the previously filed Amended Complaint was the subject of a hearing and rulings by the Honorable William M. Cave on April 5, 1995. This Court finds that Judge Cave granted summary judgment in favor of Mr. McKeever and Mile & Stockbridge, P.C. in those proceedings. This courtfurther finds that the Consent ton Dismissal as filed by Defendant American Academy of Franciscan History is effective.

William P. Turner, Judge

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY
MARYLAND

ACDEMY OF AMERICAN
FRANCISCAN HISTORY, INC.
Plaintiff

V Civil No.151496

COVINGTON & BURLING
And
PAUL I. GRINBERG, JR.
And
ROBERT H. KEELER
Defendants

AFFIDAVIT OF ROBERT H. KEELER

I solemny swear and affirm, under the penalties of perjury and upon personal knowledge, as follows:

1. I am over eighteen years of age, competent to testify, and I have personal knowledge of the facts herein contained.

2. I, Robert Keeler, did speak with Rev. Dismas Bonner, but that I did not report to anyone that Rev. Bonner said to me that Mr. McKeever had acted without authority or permission in his attempt to collect on their judgment. During our conversation I asked Rev. Bonner if he was aware that I had filed suit against the Academy for breach of contract. His response was "No, he was not aware".
(This was 2.5 years after the suit had been filed.)
I offered to send a copy of the suit to him, which I did.

3. I asked Rev. Bonner it he ordered Mr. McKeever to breach the contract on their behalf. His answer: "No."

4. I asked Rev. Bonner if the Academy would have breached the contract if asked to do so. His answer: "No."

5. I asked Rev. Bonner if he was aware that I had prevailed in the Circuit Court of Montgomery County. His Answer: "No."

6. I asked Rev. Bonner if he was aware that I had prevailed in the Court of Special Appeals. His answer: "No."

7. I asked him if he was aware that I had prevailed in the Appellate Court. His answer: "No."

8. I then asked Rev. Bonner if he know that the Court had ordered the money to be turned over to me. His answer "No."

9. I asked Rev. Bonner if he was aware that Mr. McKeever had refused to turn over the money to me in defiance of the Court's order. His answer: "No."

10. I asked Rev. Bonner if the Academy would have ordered Mr-McKeever to defy the Court's order. His answer: "No."

11. I asked Rev. Bonner if the Academy had ordered Mr. McKeever to attempt to place me in involuntary bankruptcy. His answer. "No."

/S/

Robert H. Keeler